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C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 000922

NOFORN
SIPDIS

EUR (JONES), EUR/SCE (HYLAND, SILBERSTEIN, FOOKS,
STINCHCOMB), S/WCI (WILLIAMSON, VIBUL-JOLLES), EUR/ACE
(KEETON), INL (CARROLL, SIMIC), INR (MORIN); NSC FOR
HELGERSON; OSD FOR BEIN; DOJ PASS TO OPDAT (ALEXANDRE)

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TAGS: [PGOV](#) [PREL](#) [KCRM](#) [KJUS](#) [ASEC](#) [BK](#)

SUBJECT: BOSNIA - EXTENDING THE PRESENCE OF INTERNATIONAL
JUDGES AND PROSECUTORS

REF: SARAJEVO 732 AND PRIOR

Classified By: Ambassador Charles English for Reasons 1.4 (B) and (D)

11. (U) This is an action request. See paragraph 10.

12. (C) SUMMARY. We are reaching a critical point in our
and the international community's efforts to extend the
presence of the international judges and prosecutors working
at the State Court and the State Prosecutor's Office. The
Council of Ministers' (CoM) July 23 decision to extend the
presence of internationals working on war crimes may not be
decided by the Parliament until early November or later. The
decision would come only weeks before the internationals are
scheduled to depart Bosnia. We believe that by then most of
the remaining internationals would have decided to depart
Bosnia and to take their hard-earned institutional memory
with them. Their departure would set back our rule of law
agenda in Bosnia and may jeopardize our substantial long-term
investment in Bosnia's State-level judicial institutions,
which remain fragile and are operating in an increasingly
hostile environment. We also remain concerned that the
Bosnian government has significantly reduced funding to the
State Court and the State Prosecutor's Office, such that
their normal operations are hampered and they are unable to
replace all the internationals with nationals. Principal
Deputy HighRep Raffi Gregorian told the Ambassador recently
that HighRep Valentin Inzko would be prepared to use Bonn
Powers if the Bosnian government fails to extend the
internationals working on war crimes cases. Given what is at
stake, we believe that the international community must be
prepared to decide whether to take decisive action on this
issue. END SUMMARY.

Background

13. (C) Last February, Bosnian State Court President
Meddzida Kreso and State Prosecutor Milorad Barasin began
discussions with key donors about the possibility of
extending the presence of international judges and
prosecutors working in the Special Departments for War Crimes
and Organized Crime past a legislatively-mandated December
2009 departure. From the start, we agreed with their
assessment that the internationals still have a critical role
to play in the State Court and the State Prosecutor's Office.
They provide cover to nationals, who work in an increasingly
difficult environment; assist nationals in becoming more
familiar with certain aspects of the adversarial legal

system; help Bosnia meet its obligations to the International Criminal Tribunal for the Former Yugoslavia (ICTY); ensure that new policies and practices that were put in place to make the processing of war crimes and organized crime cases more efficient and effective (e.g. case selection criteria) are further refined and evaluated; and, help build public confidence in the work of the State Court and the State Prosecutor's Office.

14. (C/NF) For months, our European colleagues resisted engaging on the issue. They later began providing political support after a Swedish-government study released in December confirmed our assessment. Then, after stalling for over a year, BiH Justice Minister Colak in May sent to the Council of Ministers legislative amendments needed to extend the presence of the internationals, but the amendments walked back much of what Kreso and Barasin sought. They extended the presence of internationals working only on war crimes, but not organized crime cases, and provided for a two-year rather than a three-year mandate. Colak, whose proposal only allowed for international judges to work at the appellate level, rejected the Court's request to permit first instance trial judges to finish their current cases past December, even though he was aware that the government may have to pay between five and ten million konvertible marks (about 3.63 and 7.26 million USD) to restart these cases. Still, the CoM on June 4 voted down Colak's amendments, with the Bosniaks arguing that it did not go far enough since it did not allow internationals to work on organized crime cases. Despite this, we succeeded in convincing Colak to re-submit his amendments and to incorporate all of our suggested changes to

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his amendments, except for allowing internationals to work on organized crime cases. Subsequently, Javier Solana, HighRep Inzko, ICTY President Patrick Robinson, and the head of OSCE in Sarajevo, Ambassador Gary Robbins, all sent separate letters to Prime Minister Spiric, urging him and the other members of the CoM to extend the presence of the internationals.

Where We Are Now

15. (C) The Council of Ministers on July 23 adopted Colak's imperfect legislative package. The Serb and Croat Ministers voted in favor of the amendments. Ministers from (the largely Bosniak) Party for Bosnia and Herzegovina (SBiH) -- Foreign Minister Sven Alkalaj and Human Rights and Refugees Minister Safet Halilovic -- voted against the measure on the grounds noted above (i.e., that the proposal did not go far enough). The two ministers from the Party for Democratic Action (SDA) were absent (Defense Minister Selmo Cikotic was traveling in Afghanistan and Security Minister Tarik Sadovic was in the midst of being removed from office). The amendments will be considered by Parliament in regular procedure in September, after the summer recess, though Prime Minister Nikola Spiric had promised Ambassadors from the "EU Troika" countries that it would be sent in urgent procedure.

What the CoM Vote Means

16. (C) Prime Minister Spiric's decision to send the legislative amendments permitting the extension of internationals in regular procedure is significant. This means that, unlike in urgent procedure, delegates could amend the draft legislation and that a final vote on amendments will not take place until November. Even if the vote took place at that time and the presence of the internationals working on war crimes cases were extended, most of the existing internationals (almost all of whom have contracts until December) would probably leave, taking all of their hard-earned institutional memory with them. It would also take the High Judicial and Prosecutorial Council, the body that appoints judges, prosecutors, and other judicial staff,

at a minimum, six-months, to fill vacancies. This would cause significant case management problems, and the international community would have to incur the additional cost of re-starting the operations of the Registry, the body that is in charge of managing the international presence at the State Court and the State Prosecutor's Office, which is in the process of shutting down.

17. (C) The CoM vote also means that international prosecutors working on over two hundred organized crime cases involving senior politicians, including RS Prime Minister Milorad Dodik, would depart, leaving these cases in limbo. It is unlikely that the nationals, who are already swamped with a burgeoning caseload and who lack expertise in investigating complex organized and financial crime, corruption, and terrorism cases, will want to take on such politically sensitive cases. Some nationals have privately expressed to us their fear that there will be increased efforts to intimidate them and that some colleagues would put these cases aside out of fear for their safety and that of their families. (Note: We have recently heard allegations that locals and internationals investigating a terrorism case were being followed by individuals who appeared to be Wahabbis. End Note). Speculation in the media over the weekend that, in voting for the measure, the ministers from the Alliance of Independent Social Democrats (SNSD) had broken ranks with RS Prime Minister Milorad Dodik is, in our opinion, disingenuous, since we believe that the Serb ministers would never stray from Dodik's instructions on the matter. Dodik and the Serbs, however, may have no intention of voting in favor of the legislative amendments adopted by the Council of Ministers. The media has reported that delegates representing Serb parties in both houses of Parliament, including the SNSD, have vowed to reject Minister Colak's amendments.

Our Options and Deadlines

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18. (C) We will need to make a decision by early September on the way ahead for international judges and prosecutors. We concur with OHR that inaction by the international community past this date will jeopardize the secondee program even if there is an eventual partial extension of the presence of international judges and prosecutors. We believe that the international community has the following options:

a) Await a vote in Parliament on the extension in normal procedure. This would likely not take place until November, which would probably result in the loss of current judges and prosecutors and long delays before new international judges and prosecutors could begin work. This option would also risk the possibility that Parliament would reject the measure.

b) Have the HighRep use his Bonn Powers to impose the CoM decision in September so that we can retain most of the current judges and prosecutors working on war crimes cases and ensure that their hard-earned institutional memory is not lost.

19. (C) As noted above, option A carries substantial risks. Even if Parliament adopted the legislative package, we might lose all of the internationals currently working on war crimes cases, including Srebrenica. Option B would ensure that we would secure the continued employment of those internationals who want to remain (we think the vast majority of them), but may draw ire from the Serbs for the use of the Bonn Powers. We could argue that an imposition would reinforce what the Council of Ministers had decided. Additionally, an imposition would help Bosnia fulfill its ICTY obligations -- both ICTY President Robinson and Chief Prosecutor Serge Brammertz have expressed public support for the extension -- as well as the implementation of the

National War Crimes Strategy (the adoption of the strategy was a "5 2" rule of law benchmark). Principal Deputy HighRep Raffi Gregorian told the Ambassador in a July 28 meeting that HighRep Valentin Inzko would be prepared to use Bonn Powers to extend the presence of internationals working on war crimes cases if Parliament does not take timely action. Gregorian also said that the HighRep has no intention of using his Bonn Powers to extend the presence of internationals working on organized crime and corruption cases.

Action Request

¶10. (C) We recommend that Washington support HighRep Inzko's inclination to use the Bonn Powers to extend the presence of the internationals working on war crimes cases in the event that the Bosnian government fails to take timely action and that we seek broad support in Quint and other key justice sector donor countries (the Netherlands, Norway, Sweden, and Switzerland) for such action.

ENGLISH